

FILE

Frank J. Rubino  
Corporation Counsel for the City of Yonkers  
40 South Broadway  
City Hall, Room 300  
Yonkers, New York 10701  
By: Rory McCormick (RM 3994)  
Associate Corporation Counsel

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
STEVEN PLOSKI,

Plaintiff,

-against-

ANSWER

ANDREW PELLEGRINI INDIVIDUALLY,  
ANDREW PELLEGRINI IN HIS OFFICIAL  
CAPACITY, JOHN TWOMEY INDIVIDUALLY,  
JOHN TWOMEY IN HIS OFFICIAL CAPACITY,  
THE CITY OF YONKERS AND THE YONKERS  
POLICE DEPARTMENT,

Index No. 08 Civ. 0077 (WCC)

Defendants.

-----X

Defendants, ANDREW PELLEGRINI, JOHN TWOMEY, THE CITY OF  
YONKERS and THE YONKERS POLICE DEPARTMENT by their attorney, FRANK J.  
RUBINO, Corporation Counsel of the City of Yonkers, as and for its Answer to the  
Complaint respectfully allege as follows:

FIRST: Deny the allegation set forth in paragraph "1" of the Complaint; except  
those portions containing conclusions of law which accordingly require no response; and  
except admit that Plaintiff purports to proceed as stated therein.

SECOND: Denies knowledge or information sufficient to form a belief as to the  
truth of any of the allegations set forth in the paragraph designated "2" of the Complaint

and respectfully refers all questions of law to the Court except admit that plaintiff purports to proceed as stated therein.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "3", "8", "9", "10", "16", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "32", "34", "37", "38", "43", "44", "45", "46", "47", "48", "49", "50", "51", "60", "67", "71", "72", "73", "74", "95", "96", "97", "99", "102", "103", "104", "105", "106", "107", "108" and "109" of the Complaint.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "4", "5", "6", "7", "11", "53", "63", "64", "65", "66", "70", "100" and "101" of the Complaint and respectfully refers all questions of law to the Court.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "13" of the Complaint; except admit that Plaintiff purports to proceed as stated therein.

SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "18", "31", "33", "35", "52", "54", "55", "56", "57", "58", "59", "61", "62", "68", "69", "75", "76", "77", "78", "79", "80", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94" and "98" of the Complaint and respectfully refers all questions of law to the Court.

SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "36", "39", "40", "41" and "42" of the Complaint.

**ANSWERING COUNT ONE**

EIGHTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "110" of the Complaint with the same force and effect as though fully set forth herein at length.

NINTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "111", "112", "113", "114", "115", "116", "118" and "119" of the Complaint and respectfully refers all questions of law to the Court.

TENTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "117" of the Complaint and respectfully refers all questions of law to the Court; except admit that plaintiff purports to proceed as stated therein.

**ANSWERING COUNT TWO**

ELEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "120" of the Complaint with the same force and effect as though fully set forth herein at length.

TWELVTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "121", "122", "123", "124", "125", "126", "127", "128", "130", "131", "132" and "136" of the Complaint and respectfully refers all questions of law to the Court.

THIRTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "129" and "137" of the Complaint

and respectfully refers all questions of law to the Court; except admit that plaintiff purports to proceed as stated therein.

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "134" and "135" of the Complaint and respectfully refers all questions of law to the Court.

**ANSWERING COUNT THREE**

FIFTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "138" of the Complaint with the same force and effect as though fully set forth herein at length.

SIXTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "139", "141", "142", "143", "144", "145" and "146" of the Complaint and respectfully refers all questions of law to the Court.

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "140" of the Complaint.

EIGHTEENTH: Deny all allegations in the "Wherefore" portion of the Complaint, except those conclusions of law which accordingly require no response; and except admit that Plaintiff purports to proceed as stated therein.

**AS AND FOR A FIRST DEFENSE:**

NINETEENTH: That if any physical force was used to effect the arrest of the plaintiff, only such physical force was used to the extent it was reasonably believed to be necessary to effect the arrest of the plaintiff, whom the arresting officer reasonably believed to have committed an offense.

**AS AND FOR A SECOND DEFENSE:**

TWENTIETH: That the plaintiff's arrest was not effectuated falsely, maliciously or without probable cause. On the contrary, there was reasonable and just cause for believing the plaintiff guilty of a criminal act and in arresting and prosecuting the plaintiff, the Defendant, CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

**AS AND FOR A THIRD DEFENSE:**

TWENTY-FIRST: Defendants' actions were in good faith and for good cause including, but not limited to, legitimate, rational, and appropriate governmental interests.

**AS AND FOR A FOURTH DEFENSE:**

TWENTY-SECOND: At all times relevant to the Complaint, defendants have been in compliance with all requirements under the laws cited by the Complaint.

**AS AND FOR A FIFTH DEFENSE:**

TWENTY-THIRD: Injuries and damages to the plaintiff were caused or were contributed to by the culpable conduct and want of care on the part of plaintiff.

**AS AND FOR A SIXTH DEFENSE:**

TWENTY-FOURTH: The individual defendants are entitled to the defense of qualified immunity.

**AS AND FOR A SEVENTH DEFENSE:**

TWENTY-FIFTH: This action is barred by the applicable statutes governing the commencement of actions.

**AS AND FOR A EIGHTH DEFENSE:**

TWENTY-SIXTH: Defendant City of Yonkers Police Department is improperly sued in this action when the Police Department is merely a department of the City of Yonkers.

**AS AND FOR A NINTH DEFENSE:**

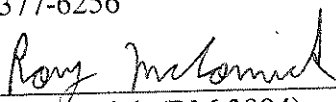
TWENTY-SEVENTH: The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendants request judgment dismissing the Complaint together with costs, disbursements, and attorneys' fees and any other relief the Court deems just and proper.

Dated: May 6, 2008  
Yonkers, New York

Yours, etc.,  
FRANK J. RUBINO  
Corporation Counsel  
Attorney for Defendant  
THE CITY OF YONKERS  
City Hall, Room 300  
Yonkers, New York 10701  
(914) 377-6256

By:

  
Rory McCormick (RM 3994)  
Associate Corporation Counsel

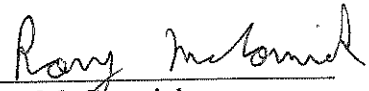
TO: John A. Raimondo, P.C.  
Attorney for Plaintiff  
399 Knollwood Road, Suite 303  
White Plains, New York 10603

**CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2008 I caused a true and correct copy of the foregoing ANSWER to be served by mail upon:

John A. Raimondo, P.C.  
Attorney for Plaintiff  
399 Knollwood Road, Suite 303  
White Plains, New York 10603

Dated: May 6, 2008  
Yonkers, New York

  
\_\_\_\_\_  
Rory McCormick